

HOUSE BILL 1954
By Davidson

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 135, to enact the "Tennessee Agricultural Alternative Fuels Production Act of 2005". This act makes appropriations for the period of July 1, 2005 through June 30, 2006 for the purposes of funding incentive payments for the production of alternative fuels and of funding the administration of the act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 135, is amended by adding Sections 2 through 8 of this act as a new part thereto.

SECTION 2. This act may be cited as the "Tennessee Agricultural Alternative Fuels Production Act of 2005".

SECTION 3. It is hereby the express intent and public purpose of the general assembly to authorize the establishment of cooperative efforts between the state and private enterprise in order to:

- (1) Encourage the utilization of corn and other agricultural products for energy purposes and thereby encourage the establishment of a substantial market for agricultural products in the state;
- (2) Revive economically depressed areas and create a significant number of new jobs;
- (3) Encourage participation of the private sector in the development of a production system for alternative fuels within the state;
- (4) Promote the use of clean, efficient and renewable energy in the state and the United States;

(5) Attract new industry to the state and thereby encourage the investment of capital in the state; and

(6) Reduce the dependence of the state and the United States on imported petroleum through the use of alternative, renewable energy sources.

SECTION 4. As used in this act, unless the context otherwise requires:

(1) "Applicant" means a person who applies for a permit as an ethanol or biodiesel dealer participant to receive production incentives under this act;

(2) "Biodiesel" means mono-alkyl-esters of long chain fatty acids derived from vegetable oils or animal fats which conform to the most recent ASTM International specifications for use in diesel engines;

(3) "Commissioner" means the commissioner of revenue;

(4) "Dealer" means any person, other than a distributor, who engages in the business in this state of distributing or selling diesel fuel, gasoline or distillate within this state, and also any person who uses or consumes diesel fuel or gasoline (except use or consumption in interstate commerce) when the diesel fuel or gasoline has not previously been the measure of the privilege tax imposed by this chapter;

(5) "Department" means the department of revenue;

(6) "Diesel fuel" has the same meaning as defined in § 67-3-103(20);

(7) "Distributor" means any person who engages in the business in this state of refining, manufacturing, producing, or compounding diesel fuel, gasoline or distillate, and selling or storing the same in this state; and it also means any person who engages in the business in this state of transporting, importing or causing to be imported, diesel fuel, gasoline or distillate into this state, and distributing, storing, or making original sales of the same in this state, for any purpose whatsoever;

(8) "Ethanol" means ethyl alcohol of a purity of at least ninety-nine percent (99%) denatured in conformity with one (1) of the approved methods set forth by the United States department of the treasury, bureau of alcohol, tobacco and firearms and derived from agricultural products which have been shipped to the ethyl alcohol producer from a grain elevator or similar facility located within the state and which have been fermented and finished to fuel grade in the state;

(9) "Gasohol" means a motor fuel containing a minimum of ten percent (10%) blend of ethanol and ninety percent (90%) unleaded gasoline or a biodiesel fuel;

(10) "Jobber" means any person purchasing diesel fuel or gasoline from a distributor or dealer and reselling the greater part of it to retailers;

(11) "Permitee" means an applicant who has been approved by the commissioner of revenue to receive dealer incentives as an ethanol or biodiesel dealer participant under this act; and

(12) "Retailer" means any person purchasing diesel fuel or gasoline from a distributor or dealer, or from a jobber, and reselling the greater part of it to users or consumers.

SECTION 5. In order to qualify as a permittee under this act, an applicant must submit proof on a form prescribed by the commissioner that the applicant is a jobber who purchases biodiesel or gasohol for resale to retailers.

SECTION 6.

(a) The department shall pay to each permittee an incentive of thirty cents (\$.30) per gallon for each gallon of biodiesel or gasohol sold to a retailer. The permittee may apply monthly for the incentive payments by the twentieth day of each month on forms prescribed by the commissioner based upon the number of gallons of biodiesel or gasohol sold to retailers during the preceding month.

(b) No more than six million dollars (\$6,000,000) may be appropriated to the department in any fiscal year for the incentives provided to permittees in subsection (a).

(c) A permittee shall, at the time of making each sale of biodiesel or gasohol to a retailer make out and deliver to the retailer a prenumbered invoice on which the permittee shall enter the full name and complete address of the retailer and the number of gallons of biodiesel or gasohol sold. This invoice may be used by a permittee as its proof of sale to obtain the production incentives authorized by this act.

(d) A gasoline distributor or dealer shall, at the time of having biodiesel or gasohol shipped to it from a producer, obtain from the shipper an invoice on which the shipper shall show its full name and address and on which the shipper shall enter the full name and address of the buyer-distributor or dealer, the type of products purchased and the number of gallons of products purchased.

(e)

(1) Except as provided in subdivision (2), permittees shall receive production incentives authorized by this act only if the corn used in the production of ethanol or the soy or other agricultural product used in the production of biodiesel is produced in the state.

(2) If corn from the state is not available for the production of ethanol, corn from other states may then be used. If soy or other agricultural product from the state is not available for the production of biodiesel, soy or other agricultural product from other states may then be used.

SECTION 7. In enforcing the provisions of this act, the commissioner is authorized to audit the proofs of sale of biodiesel or gasohol and the invoices for the shipment of agricultural products that are maintained by the permittee.

SECTION 8. The provisions of this act shall only be applicable if the air pollution control board implements an ethanol or biodiesel program as a means to obtain compliance with clean air standards set by the environmental protection agency and if the general assembly appropriates the funds necessary to implement the provisions of this act by June 30, 2006.

SECTION 9. If any provision of this act or its application to any person or circumstance is held invalid such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect July 1, 2005, the public welfare requiring it.